

rates and greater post release success.”⁶² The studies mentioned above, issued by the Florida House of Representatives Justice Council Committee on Corrections (1994) and the California Department of Corrections Research Division (1972), concluded that encouraging families to remain intact helps lower recidivism.⁶³ District of Columbia Mayor Anthony Williams recently endorsed these findings, stating “when prisoners have contact with their families, and that is coupled with good rehabilitative programs. . . then it pays dividends down the road because you have less recidivism.”” In addition, Dr. Hairston’s review of research on prisoners’ family relationships yielded two consistent findings. “First, male pnsoners who maintain strong family ties during imprisonment have higher rates of post release success than those who do not. Second, men who assume responsible husband and parenting roles upon release have higher rates of success than those who do not. There is similar evidence regarding the beneficial value of family ties for females in prisons. Family relationships have a significant influence on relapse prevention among parolees.”⁶⁵ This research accords with the experience of many Coalition members, such as the Women’s Prison Association, which provides social services to 2,000 women annually who are involved in the criminal justice system, and the Center for Community Alternatives, which provides sentencing and parole advocacy and HIV-related services to

⁶² Christy A. Visher & Jeremy Travis, *Transitions From Prsion to Community: Understanding Individual Pathways*, Annual Review of Sociology (2003).

⁶³ See also *Families Left Behind*, supra n.41 (citing C.F. Hairston, *Family Times During Imprisonment: Do they Influence Future Criminal Activity?* Federal Probation pp. 48-52 (1998))

⁶⁴ Arthur Santana, *Locked Down and Far From Home: One-Third of D.C. Prisoners Incarcerated More Than 500 Miles Away*, Washington Post (April 24, 2003) at B1.

⁶⁵ Hairston Declaration at ¶¶ 11-12. See also E. Slaght, *Family and Offender Treatment: — Focusing on the Family in the Treatment of Substance Abusing Criminal Offenders*, 19 J. of Drug Education 53-62 (1999).

incarcerated people. Both of these organizations have signed these Comments because communication with family members is essential to the ability of the people with whom they work to re-enter society **successfully**.⁶⁶

Recognizing that telephone contact is critical to parole success and reducing recidivism several corrections officials and agencies have adopted policies explicitly recognizing the importance of extending inmate telephone privileges: including the American Correctional Association,⁶⁷ Federal Bureau of Prisons and National Sheriffs' Association,⁶⁸ among others. For example, the Federal Bureau of Prisons indicates in its program statement on telephone regulations for incarcerated people that:

The Bureau of Prisons extends telephone privileges to inmates as part of its overall correctional management. Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development...Contact with the public is a valuable tool in the overall correctional process. Towards this objective, the Bureau provides inmates with several means of achieving such communication. Primary among these is written correspondence, with telephone and visiting privileges serving as *two* supplemental methods.⁶⁹

Through its policy statement, the American Correctional Association acknowledges the importance of telephone contact for correctional management purposes:

⁶⁶ See Women's Prison Association and Center for Community Alternatives Statements of Interest.

⁶⁷ The American Correctional Association is the national organization that accredits prisons

⁶⁸ Resolution of 14 June 1995.

⁶⁹ Bureau of Prisons, Program Statement No. 5264.07, Telephone Regulations for Inmates (Jan. 31, 2002), available at http://www.bop.gov/progstat/5264_007.pdf (last accessed March 9, 2004).

[C]onsistent with the requirements of sound correctional management, inmates/juvenile offenders should have access to a range of reasonably priced telecommunications services. Correctional agencies should ensure that:

- A. Contracts involving telecommunications services for inmates/juvenile offenders comply with all applicable state and federal regulations;
- B. Contracts are based on rates and surcharges that are commensurate with those charged to the general public for like services. Any deviation from ordinary consumer rates should reflect actual costs associated with the provision of services in a correctional setting; and
- C. Contracts for inmate/juvenile offender telecommunications services provide the broadest range of calling options determined to be consistent with the requirements of sound correctional management.⁷⁰

Furthermore, the American Correctional Association, which according to Corrections Corporation of America has accredited **75%** of its facilities,⁷¹ expressly adopted in 2002 a policy against excessive phone rates:

Written policy, procedure and practice [must] ensure that offenders have access to reasonably priced telephone services. Correctional agencies [must] ensure *that*:

- a. Contracts involving telephone services for offenders comply with all applicable state and federal regulations;
- b. Contracts are based on rates and surcharges that are commensurate with those charged to the general public for like services. Any deviation from ordinary consumer rates reflects actual costs associated with the provision of services in a correctional setting; and

⁷⁰ Public Correctional Policy unanimously ratified by ACA Delegate Assembly on Jan. 24, 2001

⁷¹ Corrections Corporation of America, *Why Do Business With CCA*, available at <http://www.correctionscorp.com/4main.html#performance> (last accessed March 9, 2004).

- c. Contracts for offender telephone services provide the broadest range of calling options determined by the agency administrator to be consistent with the requirements of sound correctional management.⁷²

E. Family Contact Promotes Reunification

Based on her extensive research, Dr. Hairston concludes that, “communication between prisoners and their families provides the most concrete and visible strategy that families and prisoners use to manage separation and maintain connections. Families visit their imprisoned relatives at the institutions where they are held, talk with them by phone, and exchange cards and letters as a means of staying connected.”⁷³ Contact between people in prison and their families is particularly important for children with incarcerated parents. Most state (55%) and federal (63%) inmates – some 721,500 people – are parents of children under 18.⁷⁴ In 1999, 1.5 million children under 18 had a parent in state or federal prison.” Nationwide 2.1% of minor children had a parent in state or federal prison.⁷⁵ The Department of Health and Human Services

⁷² This standard is contained in the following American Correctional Association manuals: *Standards for Adult Correctional Institutions*, third edition; *Standards for Adult Local Detention Facilities*, third edition; *Standards for Adult Community Residential Facilities*, fourth edition; *Standards for Adult Correctional Boot Camp Programs*, first edition; *Standards for Juvenile Community Residential Facilities*, third edition; *Standards for Juvenile Detention Facilities*, third edition; *Standards for Juvenile Correctional Boot Camp Programs*, first edition; *Standards for Juvenile Training Schools*, third edition; *Standards for Small Juvenile Detention Facilities*, first edition; and *Small Jail Facilities*, first edition.

⁷³ Hairston Declaration at ¶ 17.

⁷⁴ *Incarcerated Parents and Their Children*, *supra* n.40, at 2.

⁷⁵ *Id.*

⁷⁶ *Id.* For African-American and Hispanic children those numbers are even higher – the percentage of black children in the U.S. resident population with an incarcerated parent (7.0 percent) was nearly nine times higher than that of white children (0.8). Hispanic children were three times as likely as white children to have a parent in prison (2.6).

Administration for Children and Families, in a recently issued request for proposals, stresses the importance of communication between incarcerated parents and their children: "In situations where incarcerated parents were actively engaged in the mentoring process, through visits, phone conversations or letters, reunification is a natural process."⁷⁷

On average, parents in state prison are expected to serve 80 months (almost 7 years), while those in federal prison are expected to serve 103 months (almost 9 years)." In most cases, enabling families to "maintain contact during incarceration reassures children of their parents' love, motivates parents in their recovery and rehabilitation efforts, and increases the likelihood that families can be successfully reunited when prisoners return home," according to Shay Bilchik, Executive Director of the Child Welfare League of America.⁷⁹ Dr. Hairston explains:

These contacts allow family members to share family experiences, participate in family rituals, and remain emotionally attached. They help assure incarcerated parents that their children have not forgotten them and help assure children that their parents love and care about them. They allow people in prison to see themselves, and to function, in socially acceptable roles rather than as prison numbers and institutionalized dependents."

⁷⁷ U.S. Department of Health & Human Services, Administration for Children & Families, Family & Youth Services Bureau, *RFP: Mentoring Children of Prisoners*, 69 Fed. Reg. 8201, 8201-8209 (Feb. 23, 2004).

⁷⁸ *Incarcerated Parents and Their Children*, *supra* n.40, at 6.

⁷⁹ Shay Bilchik, *Children of Convicts Struggle with a Prison of Their Own*, Seattle Post-Intelligencer (May 12, 2002), at F9.

⁸⁰ Hairston Declaration at ¶¶ 17-20. Thousands of children across the country are themselves incarcerated in prisons operated by Corrections Corporation of America and other private prison administrators. See <http://www.correctionscorp.com/tourjuvenile.htm> for a description of Corrections Corporation of America's work with juveniles. According to this page, Corrections Corporation of America operates the following juvenile facilities:
Corrections Corporation of America Juvenile Facilities:
-- Shelby Training Center -Memphis, Tennessee. A 200-bed, secure juvenile center
-- Tall Trees - Memphis, Tennessee. A 63-bed, non-secure juvenile residential facility
Corrections Corporation of America Jails housing Juvenile Offenders:

Finally, it is worth noting that last year, Corrections Corporation of America, which recently “forged a partnership” with Good News Jail and Prisoner Ministry, acknowledges that “[p]relationships [between people in prison and chaplains] are intended to provide a way for [people in prison] to establish connections with the community that will benefit them upon release.”⁸¹ Appreciating both the importance of family-inmate contact, and its high cost, last December, the private prison corporation’s partner made a public appeal for phone cards which Good News Jail and Prisoner Ministry then distributed to inmates in the Guilford Correctional Center in North Carolina.⁸² Unfortunately, Corrections Corporation of America’s policies with respect to telephone services does not reflect a similar understanding of the importance of communications between incarcerated people and their families. Indeed, the high rates charged to people incarcerated at its facilities result in part from the commissions imposed by **CCA** on inmate telephone service providers.

This is a similar appeal to the Commission to modify existing policies that obstruct contact between people in prison and their families, which in turn harm penological interests, family interests, and public safety. We urge this Commission to eliminate the anticompetitive

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- Bay County Jail and Annex - Panama City, Florida
 - Hernando County Jail - Brooksville, Florida
 - David L. Moss Criminal Justice Center - Tulsa, Oklahoma
 - Houston Processing Center - Houston, Texas

Thus, reasonably priced, quality phone service is key to ensuring contact between free parents and their incarcerated children as **well**.

⁸¹ See Corrections Corporation of America, *Press Release June 5, 2003*, available at <http://www.correctionscorp.com/index.aspx>.

⁸² See *Non-Profit Wish Lists: Give Them a Hand*, Nonh Carolina News & Record (Dec. 7; 2003) at D1 (saying that *the organization* needs “[t]elephone cards with up to 500 minutes to allow inmates to call family member in United States for holidays”).

practices and collect call-only policies that enable high costs and poor service to flourish, and **that** devastate families.

IV. Allowing Exclusive Dealing Arrangements and Collect Call-Only Policies Severely Limits the Ability of Incarcerated People to Communicate With Their Lawyers

Exorbitant long distance collect call telephone rates, collect call-only policies, and the exclusivity of prison telephone contracts, which allow companies to provide substandard service, all severely restrict the ability of people in prison to communicate with their attorneys. This burden on communication interferes with the ability of criminal defendants to exercise their constitutional right to legal representation, of immigration detainees and incarcerated people with civil cases to exercise their right of access to the courts, and of incarcerated people to prepare for a successful re-entry into society.

The ability of incarcerated litigants to communicate with their attorneys is of paramount importance. The Sixth Amendment to the U.S. Constitution guarantees criminal defendants the effective assistance of counsel. The United States Supreme Court has held that this provision requires the government to provide counsel to those who cannot afford to hire an attorney.⁸³

All other litigants have a constitutional right of access to the courts under the Fourteenth Amendment to the U.S. Constitution. For many of these litigants, the assistance of an attorney is essential for them to be able to gain access to the courts. In immigration proceedings, for example, an immigrant represented by an attorney is approximately four times more likely to persuade an immigration judge to grant an asylum application than is someone who has no attorney.⁸⁴ If a litigant has limited English skills – as many detained immigrants do – or if a litigant is illiterate – as many prisoners are – the need for an attorney is all the greater.

⁸³ *Alabama v. Shelton*, 535 U.S. 654 (2002); *Gideon v. Wainwright*, 312 U.S. 335 (1963)

⁸⁴ Christopher Nugent, *The INS Detention Standards and You: Facilitating Legal Representation and Humane Conditions of Confinement for Immigration Detainees*, available at www.abanet.org/immigration/probono/home.html.

For people in prison with pending criminal charges or appeals, or with immigration or civil cases, many of whom are incarcerated in privately administered prisons, it is vitally important to be able to speak with and assist the lawyer handling their cases. A person may need to contact his or her lawyer to share information about the case, to learn crucial information about the status of the case, or to make critical strategy decisions.⁸⁵ Often, the telephone is the only or most efficient means to communicate with lawyers because prisons and jails are located far from lawyers' offices, or because resource constraints, busy caseloads, or inconvenient visiting schedules force lawyers to visit only infrequently.

Courts have long recognized that the ability to communicate privately with an attorney by telephone is essential to the exercise of the constitutional rights to counsel and to access to the courts.⁸⁶ They have accordingly held that, when prisons' collect call-only policies interfere with the ability of incarcerated people to communicate with their lawyers, they may violate these

Johnson v. Galli, 596 F. Supp. 135, 138 (D. Nev. 1984) (use of a telephone is essential to contact a lawyer, bail bondsman or other person in order to prepare a case).

⁸⁶ *Murphy v. Waller*, 51 F.3d 714, 718 & n.7 (7th Cir. 1995) ("Restrictions on a detainee's telephone privileges that prevented him from contacting his attorney violate the Sixth Amendment right to counsel. . . . In certain limited circumstances, unreasonable restrictions on a detainee's access to a telephone may also violate the Fourteenth Amendment."); *Tucker v. Randall*, 948 F.2d 388, 390-91 (7th Cir. 1991) (denying a pre-trial detainee telephone access to his lawyer for four days would implicate the Sixth Amendment); *Johnson-El v. Schoemehl*, 878 F.2d 1043, 1051 (8th Cir. 1989) (holding that inmates' challenge to restrictions on the number and time of telephone calls stated a claim for violation of their rights to counsel); *Miller v. Carlson*, 401 F. Supp. 835 (M.D. Fla. 1975), *aff'd & modified on other grounds*, 563 F.2d 741 (5th Cir. 1977) (granting a permanent injunction precluding the monitoring and denial of inmates' telephone calls to their attorneys). See also Dana Beyerle, *Making Telephone Calls From Jail Can Be Costly*, Times Montgomery Bureau (Sept. 22, 2002) (Etowah, Alabama county jail under court order to provide phones to people incarcerated in the jail based in part on complaints they could not talk to lawyers).

rights.⁸⁷ The prison telephone arrangements challenged in the *Wright Petition* pose precisely the types of impediments that the courts have found to be unconstitutional. They interfere with the ability of people in prison to communicate with their lawyers, in violation of the Sixth Amendment, in several ways: by keeping the cost of the calls high, by restricting people in prison to making collect calls, and by allowing exclusive telecommunications service providers to provide substandard service.

In section I.D.1, these Comments listed some of the extremely high costs that Coalition members have had to pay in order to accept collect calls from their clients in prison – adding several hundred dollars, and sometimes over a thousand dollars to their monthly phone bills. Publicly funded lawyers, who represent the vast majority of criminal defendants incarcerated in jails and prisons, often cannot afford to accept high-priced collect calls from their clients. State and county governments bear the cost of providing legal representation to the poor in criminal cases, typically by creating public defender programs, or by using private attorneys who are appointed on a case-by-case basis or who contract to accept a county's full or partial caseload in return for a lump sum.⁸⁸ Indigent defense systems across the country suffer from severe under-

⁸⁷ See, e.g., *Lynch v. Leis*, Docket No. C-1-00-274 (S.D. Ohio Feb. 19, 2002) (holding that where public defender's office and many private attorneys refused most collect calls, a prison's collect call-only policy was unconstitutional) (unpublished decision on file with the Brennan Center); *In re Ron Grimes*, 208 Cal. App. 3d 1175, 1178 (1989) (holding that switch by Humboldt County (California) Jail from coin operated to collect-only calls violated the constitutional rights of people incarcerated there because the public defender's office, other county departments, and some private attorneys did not accept collect calls).

⁸⁸ The Spangenberg Group, *State and County Expenditures for Indigent Defense Services in Fiscal Year 2002* (American Bar Assoc. 2003) (describing each state's indigent system and expenditures).

funding, which commentators credit with causing a “crisis” in indigent defense.⁸⁹ For example, in Texas – where there are 16 private Corrections Corporation of America facilities (including several county jails and state prisons), and many other privately run jails and prisons – a report on indigent defense practices concluded that none of the counties studied “provide[s] sufficient funds to assure quality representation to all indigent defendants.”⁹⁰ The compensation rates for court-appointed lawyers are so low that often they are not paid for work performed outside of court, such as visiting clients in jail.”

Faced with these resource constraints, many attorneys representing indigent criminal defendants – including signatories such as Lesli Myers, who represents people incarcerated in a Corrections Corporation of America facility in Broken Arrow, Oklahoma – simply are unable to afford collect calls from their clients, or are forced to severely limit the number of such calls they

⁸⁹ Richard Klein and Robert Spangenberg, *The Indigent Defense Crisis* (The American Bar Assoc., Section of Criminal Justice, Ad Hoc Committee on Indigent Defense Crisis 1993); NAACP Legal Defense and Educational Fund, *Assembly Line Justice: Mississippi's Indigent Defense Crisis* 6 (2003) (“Lawyers for the poor lack funds to conduct the most basic investigation, to conduct legal research, or to hire experts”); Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Indigent Defense in Pennsylvania* 184 (May 2002) (concluding that indigent defense receives inadequate resources to provide adequate representation); Bill Rankin, *Indigent Defense Rites F*, *The Atlanta J. Constitution* (Dec. 12, 2002) (describing shortcomings and underfunding in Georgia’s indigent defense system, which handles 80% of the state’s criminal cases); Texas Appleseed Fair Defense Project, *The Fair Defense Report: Findings and Recommendations on Indigent Defense Practices in Texas* 10-12 (Dec. 2000) (describing lack of resources in Texas’ indigent defense system); Douglas W. Vick, *Poorhouse Justice: Underfunded Indigent Defense Services and Arbitrary Death Sentences*, 43 Buff. L. Rev. 329 (1995) (discussing the problem of underfunding in indigent defense systems); The Spangenberg Group, *A Comprehensive Review of Indigent Defense in Virginia* 82 (American Bar Assoc. Standing Committee on Legal Aid and Indigent Defendants Jan. 2004).

⁹⁰ Texas Appleseed Fair Defense Project, *The Fair Defense Report: Findings and Recommendations on indigent Defense Practices in Texas* 12 (Dec. 2000).

⁹¹ *Id.*

accept.⁹² For example, four district public defenders in Tennessee – a state in which the Corrections Corporation of America houses almost a quarter of the prison population – do not accept collect calls from prison.⁹³ Likewise, in Hamilton County, Ohio – a state in which approximately 1,800 people are housed in private prisons – the public defender’s office and many private attorneys refuse most collect calls from jails and prisons.⁹⁴ Many other lawyers severely limit the number of collect calls they accept from people in prison. Coalition member North Carolina Prisoner Legal Services Inc., which represents people in prison in both civil litigation and criminal appeals, does not accept collect calls from people in prison except in emergency situations or cases where it represents the client in litigation, when court filing deadlines require it.⁹⁵ Coalition member the Committee for Public Counsel Services, which provides public defender services for the Commonwealth of Massachusetts, accepts collect calls only at certain times of day, and only if the caller’s particular attorney is in the office and

⁹² Myers Statement of Interest. *See also The Issue: Phone Fees, Overcrowding Merit Discussion. Our View: These Two Issues Won’t Go Away When New Jail Opens for Business*, Evansville (Ind.) Courier & Press (Dec. 23, 2003) (Vanderburgh County, Illinois public defender does not accept collect calls from people in jail); *U.S. ex rel. Green v. Washington*, 917 F. Supp. 1238, 1244 (N.D. Ill. 1996) (finding that as a result of 1993 budget cuts the Illinois Office of State Appellate Defender for the First District had to “reduce its budget for travel to prisons and to limit the office’s ability to accept collect phone calls from clients”); *Greer v. St. Tammany Parish Jail*, 693 F. Supp. 502 (E.D. La. 1988) (inmate stated he was only allowed to make collect calls, and the St. Tammany Parish public defender’s office did not accept collect calls); *Malady v. Baker*, 650 F. Supp. 901, 903 (E.D. Mo. 1987) (public defenders in Missouri decide whether to accept inmate collect calls based on “urgency of communications, possibility of correspondence and budgetary concerns”). *See also* cases discussed in note 87, *supra*.

⁹³ E-mail from Andy Hardin, Executive Director of the Tennessee District Public Defenders Conference, Feb. 26, 2004, on file with the Brennan Center; Getahn Ward, *Private Prison Operator Ready to Grow Anew*, *The Tennessean* (Oct. 6, 2003).

⁹⁴ *See Lynch v. Leis*, *supra* n.87; Ohio Department of Rehabilitation and Correction, *The Institutions*, available at <http://www.drc.state.oh.us/web/prisprog.htm>.

⁹⁵ *See* North Carolina Prisoner Legal Services, Inc. Statement of Interest.

available to take the call.⁹⁶ The Prisoner's Rights Information System of Maryland, a private legal services group under contract with Maryland to provide legal services to people in prison, has a similar policy and will accept phone calls from actual clients only.

In addition to interfering with attorney-client communication, the high cost of long distance collect calls from prison reduces the total assets available to finance criminal defense and other types of legal representation for people in prison. Some publicly funded criminal defense lawyers, such as signatories Kern County, California public defender Mark A. Arnold; the Metropolitan Public Defender's Office in Davidson County, Tennessee; and the New York-based Office of the Appellate Defender and Center for Appellate Litigation, are not reimbursed for the collect calls they accept and must absorb the costs of collect calls from their clients.⁹⁷ Many immigration attorneys and legal services lawyers, which receive their limited funding from government sources, foundations, and individual donations, do the same. Other publicly funded criminal defense lawyers, such as signatory Clay Hernandez, P.C., which represents people in

⁹⁶ See Committee for Public Counsel Services Statement of Interest.

⁹⁷ See Arnold Statement of Interest; Metropolitan Public Defender's Office Statement of Interest; Office of the Appellate Defender Statement of Interest; Center for Appellate Litigation Statement of Interest.

Even when lawyers are reimbursed for some collect calls, there are often stringent limits on the number of collect calls from prison for which they will be reimbursed. These limits are presumably a result of the high cost of the calls. For example, lawyers who are appointed to represent indigent criminal defendants in federal criminal cases before the U.S. Court of Appeals for the Sixth Circuit are instructed:

Long distance telephone calls may be reimbursed where it is determined that the calls were reasonable and necessary for proper handling of the case, except that the cost of telephone calls to the client will be reimbursed only where they have been authorized by the court in advance. In any event, funds are not available to cover either counsel's time or expenses for more than three telephone conferences with the client.

United States Court of Appeals For The Sixth Circuit Criminal Justice Act (CJA) Form 20
Submission Instructions, Section C.5 (Revised and Updated: 7/11/2002).

private and public prisons in Arizona, pass the costs of their clients' collect calls on to the governmental entity funding them.⁹⁸ Either way, the net result is that a portion of the scarce public dollars allocated for the defense of indigents in criminal cases and for the representation of low-income people in other types of cases are diverted to private prison administrators and the telephone companies that have exclusive inmate service contracts at those facilities, instead of being spent on investigators, training for attorneys and investigators, law books, and other items essential to providing the legal representation that is so sorely needed, and that is often constitutionally required.

Even if the cost of collect calls from prison were lower, collect call-only policies would still hamper the ability of incarcerated people to communicate with their lawyers. Many criminal defense lawyers – including several of the attorneys participating in the Coalition signing these Comments – use automated telephone systems in order to avoid the expense of employing a receptionist.⁹⁹ These telephone systems generally cannot accept collect calls, with the result that even if the lawyers could afford to accept the calls, they would not be able to do so. A similar problem arises for attorneys who use answering machines or voice mail, because when their incarcerated clients are limited to calling collect, the clients cannot leave messages.¹⁰⁰

Moreover, the service problems described in section I pose serious impediments to the ability of incarcerated people to communicate with their lawyers. For example, Bruce Teichman,

⁹⁸ Likewise, Madison, Wisconsin attorney Anthony Delyea, who takes cases on contract for the state public defender's office, bills calls from indigent clients to the state, which ends up paying the inflated rates. Steven Elbow, *Jailhouse Phone Shakedown: Corporations, Lockups and Prison Here Profit by Forcing Inmates to Make Collect Calls at Crushing Rates*, The Madison Capitol Times (Wis.) (Oct. 5, 2002).

⁹⁹ See Dennis Roberts Statement of Interest.

¹⁰⁰ See Crane Statement of Interest.

a member of the Coalition submitting these Comments, reports that his clients' calls were blocked from a private prison serviced by Evercom. When he contacted Evercom, he was told that his service had been interrupted for failure to pay his phone bill, despite the fact that Mr. Teichman's phone payments were current. The representative advised Mr. Teichman that, in addition to sending his payments, he had to call Evercom each month to notify them that he had made a payment. Before reconnecting service, Evercom requested proof of past payments, a tax identification number and other documents. If private prisons were prohibited from entering into exclusive contracts with phone service providers, market forces and competition would create disincentives to imposing this level of inconvenience and poor service on their customers.

In addition to interfering with the constitutionally protected right to counsel, the telephone policies challenged in the Wright Petition also hinder the ability of incarcerated people to prepare for their eventual re-entry into society. People in prison often need to contact lawyers in connection with civil litigation necessary to ensure that, when they are released, they will have families, homes and employment. For example, people in prison often need to contact their lawyers to arrange for visitation with their children or to fight threatened terminations of their parental rights, to fight threatened foreclosures on their homes, and to preserve their good credit histories.¹⁰¹ When people in prison are unable to contact their lawyers, their ability to participate in this litigation is impaired, with the result that they may lose their parental rights, their homes,

¹⁰¹ For examples of ways in which lawyers often play an essential role in permitting imprisoned parents to retain their relationships with their children, see Legal Services for Prisoners With Children, *Case Studies: Incarcerated Women With Young Children*, available at <http://prisonerswithchildren.org/issues/pwcpmp.htm>; Legal Services for Prisoners With Children, *Case Studies: Pregnant Women*, available at <http://prisonerswithchildren.org/issues/pwcpreg.htm> (both on file with the Brennan Center for Justice).

and other elements of a stable, productive life. This makes it much more difficult for them to reintegrate into society upon their release from prison.

V. Conclusion

For the reasons stated herein, the members of the Ad Hoc Coalition for the Right to Communicate respectfully request the Commission to address anticompetitive practices that result in excessive telephone service rates for people incarcerated in privately administered prisons. Such facilities should be required to permit competitive telephone service providers to offer services to incarcerated people in the manner described in the *Wright Petition* and supporting affidavit and should allow such providers to offer debit card or debit account services in addition to collect calling services. Moreover, the payment by telephone service providers of commissions to prison administrators should be prohibited. These steps are all necessary to facilitate reasonably priced telephone services to incarcerated people, which is vital to the penological and rehabilitative goals discussed above.

Respectfully submitted,

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Appendix A

APPENDIX A: STATEMENTS OF INTEREST

1. People with family members or friends in prison

Janie Canino, who lives in Texas, regularly accepts long distance collect phone calls from her son, who is in prison in Louisiana. The cost of accepting these calls from my son adds approximately \$75 to \$100 to her phone bill each month. This is a severe burden, because she is a single parent, supporting two elderly parents and a son in prison on her small salary. However, she cannot refuse her son's calls because when he calls it gives her peace to know he is okay. A mom can tell in her child's voice when things aren't quite right. It gives her son peace knowing he can pick up the phone when he is lonely, depressed, or whatever to be able to talk with his family.

Duane Carter has a son incarcerated in the Florence, Arizona State Prison Complex - Eyman, Cook Unit. He believes that the inmates of prisons are being robbed by the necessity of paying such high prices for phone calls. Just a simple 15 minute collect phone call from Florence, Arizona to Mesa, Arizona costs almost \$6.00. If a long distance company like 10 10 987 were used, it would cost 39 cents to connect plus 3 cents a minute, that would be **84** cents. People can call all over **USA**, Canada, South America, and most of Western Europe at this rate. Surely there is some way to get a rate, perhaps not as low as this, but a lot more reasonable than what is being used. Another problem the inmates have with telephone service is that it is practically impossible for the inmate to make a call to speak to his aflomey or visa versa.

Kathy¹ cares about this issue because she loves her son, who was incarcerated in a private prison. She wants to be able to hear his voice, and be there to support him. She wants him to know his family is here for him, but does not want to have to pay hundreds of dollars per month because the costs of calls are so outrageous. She is a single parent who **works** a full time job and with the cost of my bills she can not keep my head above water. Having a loved one in the system is difficult as it is and yet the monopoly on the cost of calls only makes a further hardship for everyone.

Phil Klitgaard, who lives in Iowa, has been paying \$1 8.89 for a 15 minute phone call from a friend in prison in Texas. To keep in touch, he has been paying \$500 - \$700 a month for long distance collect calls. He believes this is basically nothing more than greed on the part of the phone companies since there are no other options open to the inmates or their families and the phone companies control the rates. These phone calls are beneficial to the inmates and their family and friends but cause financial hardship and emotional stress due to the rates.

Maria M. Rangel has a brother located at the Arizona State Prison Complex, Cheyenne Unit in Yuma, Arizona. She participates in these Comments because when he would call her home phone in Peoria, **AZ** it was an average of \$5.00 per call when you can make a long distance call on a payphone at \$1.00 for 5 minutes.

¹ This is a pseudonym - she wishes to remain anonymous

Joan Roberts² and her husband – who are respectively 62 and 72 – live in California, and their son is incarcerated approximately 600 miles away in Arizona. His institution limits his telephone calling to collect calls. The Roberts rely heavily on telephone calls to communicate with him, because they live too far away from his institution to visit frequently, and mail delivery in his institution is so unreliable that, at times, he has gone four months without receiving any of the letters she has sent him. The Roberts' phone bill for calls from their son averages more than \$300 monthly.

When Robin Stewart's brother was taken into custody after he showed up 20 minutes late for court, he was unable to call her for three days because her phone company – Comcast – does not allow collect calls unless the customer opts to be able to receive them, and because she had not signed up with a billing service. Ms. Stewart had not done either of these things because she did not know that she had to. For her brother to call his attorney collect from prison costs him \$5.69 for the initial minute, and \$1.69 for each additional minute. Five calls totaling thirty minutes cost \$104.10, without adding in any taxes or surcharges.

Gail Sullivan, who lives in New York, finds that phones are a necessity for communicating with her husband, who is in prison in New York, as they have children together and have needed to have some kind of contact for their sons to speak to their father when situations occur. The cost of the calls takes away money from the food she puts on the table, or compromises her ability to pay her bills. She participates in these Comments because even though her husband committed a crime, she and her children did not. Nonetheless, they are all paying the price. Although the prison system preaches about the value of family contact it isn't making it easy for families to maintain that contact.

Carole Tkacz, of Gary, Indiana, has accepted long distance collect calls from her son when he was in prison. She is a single, self-supporting woman, and the phone bills imposed a tremendous burden on her finances.

John and Linda Wojas are retired parents on a fixed income paying prohibitive costs for collect calls from our inmate daughter, Pamela A. Smart. They have paid thousands of dollars over the past fourteen years (last year \$5,000.00) being forced to use the prison telephone carrier; unable to use their own carrier at a lower rate. In addition, because their daughter is indigent, the Wojas' have absorbed the same telephone costs of attorneys over the years in order that she may have attorney representation in court. It is a nine hour drive to see her, necessitating an overnight stay many times incurring additional costs. During her time in prison, their daughter has been physically assaulted, resulting in hospitalization and plastic surgery. Recently, she was the victim of a sexual assault by a correctional officer. The telephone is the only means of providing immediate support and encouragement during these horrific times. The Wojas' ask the FCC to take into account the punishment levied on parents when they are forced to accept collect calls from a carrier not of their choice in order to maintain a lifeline and keep their daughter's hope alive.

² This is a pseudonym – she wishes to remain anonymous

11. Organizations and individuals providing direct services to people in prison & their families

The mission of the Arizona Coalition **for** Effective Government (AzCEG) is to have a positive influence in the lives of men and women currently incarcerated in Arizona's prison system by passing legislation that will change the manner in which the Arizona state government operates and to give the inmates the information they need to help them resolve their immediate issues. Most AzCEG volunteers have a loved one in prison, and consequently have to pay the high cost of accepting **phone** calls from people in prison.

The Center for Community Alternatives provides sentencing and parole advocacy services, and HIV related services to defendants detained in local jails and people incarcerated in New York State correctional facilities. As such it is vital for the organization to be able to communicate with its clients without undue costs. The Center is a not-for-profit organization with limited resources and thus must limit the calls that it accepts from its incarcerated clients because of the exorbitant rates. Also, as an agency that works in the field of reentry, it appreciates the critical importance of maintaining family ties. The costs of long distance calls are prohibitive for most prisoner families, who typically are low income. The Center support the Coalition's efforts on behalf of the right of people in prison to communicate.

Families in Crisis, Inc. is a private, not-for-profit organization in Connecticut that provides counseling and support services for families of people in prison. It conducted a survey several years ago revealing that many of the families it works with receive collect calls from people in prison and experience hardship as a result of the high phone bills they must pay to receive those calls. Connecticut sends some of its inmates to Virginia, which makes it difficult and expensive for family members to visit loved ones in prison, and makes phone communication particularly important.

Family and Corrections Network (FCN) is a national provider of resources for families of people in prison and those working with them. The unfair cost of long distance collect calls from people in prison and their families is a major concern for its 150 member organizations and individuals and the thousands of users of our web site. For years, families of members who are in prison have complained to FCN about telephone bills of \$200 or more a month - all going to pay for collect long distance calls. In January, 2003 it published an article by Liz Gaynes, a prison-family member who estimated she had paid \$40,000 for collect calls since 1984.

The Female Offenders Re-entry Program **of** Lebanon County, Pennsylvania ("F.O.R.E.") works with women coming out of prison. The organization's board of directors includes professionals who see in their jobs the impact that high priced phone calls have on families of people in prison. The board of directors also includes ex-offenders who can attest to the strain the high cost of their collect calls put on their families. The high prices made calling home to their children very hard. The families caring **for** their children generally did not have a lot of money, so the number of calls they could accept was limited. This was particularly hard on the children, who were already dealing with **the** issue of separation. If they had a hard day in school or something really great happened for them they needed to share this with their mothers. The high cost of collect calls from prison made that impossible.

The Rev. Kobutsu Malone is a Zen Buddhist priest who serves as a prison and death row chaplain. He has been working with people in prison for around 13 years. His ministry runs on begging – his only income consists of what he can get people to donate. As a result, he has had to refuse calls from some incarcerated people in need of pastoral counseling due to his inability to pay for the calls.

Dr. Eleanor Pam is a Professor Emerita at the Inmate Education Program at John Jay College of Criminal Justice of the City University of New York. She has an ongoing relationship with people in prison who call her frequently at great personal expense to her, especially since she is involved in mentoring them for post-graduate degrees. Phone conversations about their progress and classroom work tend to be lengthy and are often the most immediate link to helping with their questions. Since studies show a connection between recidivism/rehabilitation and education while in prison, it would be helpful if the system supported, rather than impeded, this activity. Telephone costs should not be this prohibitive for those who volunteer their time and energy.

The Women's Prison Association provides social services to 2000 women a year who are involved in the criminal justice system. It pays for collect calls from incarcerated people out of its budget. It participates in this Coalition because frequent and affordable phone calls are key to maintaining family connections, providing for the well-being of children, and aiding people in prisons in making a successful adjustment to the community. Supportive families should be helped, not bankrupted.

111. Attorneys

Mark A. Arnold is the Public Defender for Kern County, California. His office accepts collect calls from incarcerated clients. In November, 2003, which was a typical month, collect calls from clients cost his office \$460.51. This money came out of his office's budget, which is extremely limited. If their phone bills were lower, the office could use that money for attorney or investigator training, law books, expert witnesses or other items crucial to his clients' defense. Additionally, his clients' families are routinely charged exorbitant fees for accepting collect calls from their loved ones in prison.

Shane Laughton Brabazon, Esq. is a criminal defense attorney practicing in Green Bay, Wisconsin. As a result of the high cost of collect telephone calls from people in prison, she has been unable to accept the many collect calls her office has received from people seeking representation. Additionally, the high cost of long distance collect calls from prison has forced many of her clients' families to refuse collect calls from their loved ones in prison, even though they would like to be able to accept those calls.

William Bunting is a criminal defense lawyer in Charlone, North Carolina who must accept collect calls from his clients in order to communicate with them about their cases. Additionally, his clients' families often suffer severe hardship as a result of the high phone bills they must pay in order to keep in touch with their family members in prison.

The Capital Area Immigrants' Rights Coalition ("CAIR Coalition") provides services to the immigrant advocacy community and to people in immigration detention in the greater Washington, DC metropolitan area. CAIR Coalition brings together community groups, pro bono attorneys, volunteers and immigrants to work for a fair and humane immigration policy. CAIR Coalition provides education and training, public policy development, forums for sharing information, legal support services and other empowerment programs to individuals and organizations that represent immigrants. Among its many activities, CAIR Coalition assists individuals detained by United States Immigration and Customs Enforcement with their credible fear interviews, conducts legal rights presentations for them regarding immigration remedies, and represents *or* seeks pro bono representation for them.

CAIR Coalition participates in these Comments because legal representation is pivotal to vulnerable immigrant families, many of which do not have funds to obtain legal representation. Each month, CAIR Coalition visits 4 to 5 county jails in central and southern Virginia where immigrants are detained. A significant percentage of the individuals the Coalition meets are asylum seekers who have committed no crimes, but are co-mingled with U.S. citizen inmates. These jails where they are incarcerated are located anywhere from 45 minutes to four hours away from its office. Collect calls from those facilities cost between three dollars and five dollars per minute, depending on the facilities' distance from the caller. The CAIR Coalition is unable to accept these calls due to their exorbitant costs. Likewise, many pro bono attorneys opt not to represent detained individuals – arguably the most vulnerable population amongst immigrants – due to the high costs of representing them (including the high cost of collect calls). The high cost of the collect calls consequently severely hampers the ability of people in immigration detention to obtain legal assistance.

Dawn E. Caradonna, Esq. represents incarcerated people in criminal, family law and juvenile cases in Peterborough, New Hampshire. She accepts long distance collect calls from her clients, including from a client in a Corrections Corporation of America facility in Leavenworth, Kansas. She pays for these calls herself because it is difficult to track the cost by client and difficult to get reimbursement from the state or federal government. In order to keep her costs down, her staff accepts collect calls only when she is in the office and available to speak to her clients. As a result, clients must sometimes make repeated calls or write to her in order to get information to her, and are not able to get important information to her quickly. Many of the other criminal defense attorneys in her area do not accept collect calls at all.

Ms. Caradonna also participates in these Comments because of the impact that the high cost of long distance collect calls has on her clients' families. Many of these families have already had their finances devastated by the incarceration of a breadwinner; the high cost of long distance collect calls exacerbates their already severe financial problems. Moreover, many of her clients' children are unable to talk to their incarcerated parents on the telephone because their custodial parents are unable to afford the cost of the telephone calls.

The Center for Appellate Litigation is a New York not-for-profit law firm which handles appeals and post-conviction proceedings on behalf of criminal defendants; in cases assigned to it by the New York Appellate Division. The office accepts collect calls from clients who need to provide necessary information about their cases, and to participate in the course of their defense.

Accepting these calls costs the office between \$125 and \$150/month. This money could be better spent on the office's law library or other items essential to representing clients.

The **Committee for Public Counsel Services** is the public defender agency for the Commonwealth of Massachusetts. It spends thousands of dollars a month on local, collect calls from its clients incarcerated in public correctional facilities, funds that could be spent in a number of ways to improve and enhance the legal services provided to its clients. In an effort to control costs, it has implemented a policy limiting the time of day its offices will accept collect calls, and it only accepts calls if the client's attorney is in the office and available to take the call.

Richard Crane is an attorney representing federal and state inmates housed in both public and private facilities. (He was vice-president for legal affairs at Corrections Corporation of America from 1994 through 1997.) When inmates are allowed to place collect calls only, it is very frustrating and expensive for them and their families. When Mr. Crane's phone lines are busy or no one is in the office to accept a collect call, the inmate is *not* even able to leave a message. If the inmate could leave a message with his question, then an answer could be available when he called back – or better – a thoughtful and complete answer could be mailed to him, saving the cost of an additional call.

Several of Mr. Crane's inmate clients have had the unfortunate experience of being at prisons served by a telecommunications providers named "Evercom" and "Value Added Communications." These companies (they may be one and the same) do not have a billing relationship with Mr. Crane's carrier (AT&T). So, they place a block preventing any client and potential client calls to Mr. Crane's number, without telling them or him that they are doing so. The block is only removed when Mr. Crane has deposited \$50 with the company. When the \$50 is gone, the block is restored; when the inmate is gone, the company keeps what is left of the \$50.

Frank M. Dunbaugh is a civil rights attorney in private practice in Annapolis, Maryland. He accepts long distance collect calls from a person serving a life sentence, who he has represented on a pro bono basis for approximately 20 years in a series of post-conviction, re-sentencing and appeals matters. Until this year, when a new contract was introduced with slightly lower rates, the cost was \$3.00 to connect and 45 cents per minute. When his case is active, they speak for about 20 to 30 minutes each week. The client is incarcerated near Cumberland, Maryland, about 165 miles from Annapolis, where Mr. Dunbaugh lives and works, so Mr. Dunbaugh is rarely able to visit him. Mr. Dunbaugh also accepts numerous local collect calls from people incarcerated in the Baltimore City Jail/Baltimore City Detention Center, who he has represented since 1981 in consolidated cases involving overcrowding and the conditions of confinement.

David Goldberger is a Professor of Law and Director of Clinical Programs at the Ohio State University College of Law. His interest arises from the fact that for over thirty years he has been representing prison inmate clients in litigation seeking to assure that governmental burdens on their rights and activities are confined to legitimate governmental interests and do not improperly burden inmates' First Amendment rights

Clay Hernandez, **P.C.**, represents defendants in both state and federal cases in Tucson, Arizona. When these defendants are incarcerated either before or after trial, they need to make long distance collect calls to his office or to their families. His office accepts these long distance collect calls from these defendants from private prisons, including a Corrections Corporation of America facility in Florence, Arizona, and also from state and federal facilities. Unfortunately, these charges are 4 to 10 times more than the actual cost of phone calls of similar duration from people who are not in prison. In some of his cases, the county or federal government reimburses him for the cost of the calls. In other cases, his office ends up paying for the calls.

Melissa Hill is a sole practitioner doing criminal appellate and habeas corpus work in California and New Mexico. Her clients in both states are distant from her office, so she must maintain communication by telephone. Every one of her clients can only call her if she accepts their calls collect. In most of her cases, she is court-appointed, or working under contracts with the state or state agencies. She is usually paid a flat fee that provides no reimbursement for long distance phone charges. Just accepting a few short collect calls a month from her clients adds an extra \$50 to \$100 to her phone bills. Often, the exorbitant cost of accepting calls from her clients collect, as frequently as they would like to call, strains her monthly budget.

Mary Jo Holloway is a criminal defense attorney practicing in several rural counties in Texas. She has always accepted collect calls from her clients who are in prison. In many instances she has represented the clients as a result of a court appointment and so has ended up **bearing** the cost as an office expense. She has also had clients' calls to her blocked because her long distance phone service provider did not have a contract with the exclusive phone service provider for the clients' prison, and she was not willing to provide the exclusive provider with the business and personal information it demanded in order to set up an account for her. She knows other defense lawyers who do not accept collect calls from clients in prison because they simply cannot afford the cost. Some of her clients' families have had their phone service shut off because they have been unable to pay the phone bills generated by collect calls from their relatives in prison.

Robert E. Juceam is a senior partner of the Fried, Frank, Harris, Shriver & Jacobson LLP law firm based in New York. He represents persons in prison for criminal convictions and civil detainees for alleged immigration law violations or pending asylum processing. Often, the civil detainees are housed in privately contracted facilities or, in the absence of room in federal civil detention centers, in state penal facilities. Wildly overpriced collect call charges to his home, office and cell phones, and collect call-only policies that make it impossible for his clients to leave a message on voice mail (along with malfunctioning prison telephones) are a persistent and disturbing cause of limiting his clients' access to legal counsel on urgent matters in their cases. He is also knowledgeable about the harm, waste and burdens these aspects of prison and detention center phone call policies cause in other cases, based on his experience as a former member of the American Bar Association's Standing Committee on Pro Bono; an inspector of criminal and civil detention facilities under the "Detention Standards Guidelines" agreed to by the U.S. Department of Justice and the American Bar Association; and a director of Pro Bono Institute, Inc., a Washington, D.C.-based organization that, among other things, sponsors the Law Firm Pro Bono Challenge to enhance pro bono participation by signatories from among the 250 largest U.S. law firms.

Averil Lerman is an Assistant Public Advocate with the Alaska Office of Public Advocacy in Anchorage. Her office provides legal services for indigent Alaskans who are charged with or have been convicted of crimes in Alaska. In addition to representing hundreds of Alaskans who are incarcerated in various locations in Alaska, the office represents a number of the more than 800 Alaskans who are housed in a Corrections Corporation of America facility in **Florence, Arizona**, more than 2,000 miles from their homes.

The telephone system has been a continuing serious problem for Ms. Lerman's clients, both those in Arizona and those in Alaska correctional centers. Many inmates in both locations come from remote rural villages in which there is almost no cash economy. The exorbitant up-front cash demands made by the telephone company before a person in prison may contact his family often end any opportunity for maintaining contact with family during the period of incarceration. This is true even if the inmate is housed in Anchorage, if the family is living a subsistence traditional life in Bush Alaska. Because of the distance between the imprisoned person and his family, and the complete lack of roads between them, and the lack of a cash economy, the only possible way to maintain contact is by telephone. The unconscionable prices and conditions of phone service should be prohibited.

Since 1973, the **Lewisburg Prison Project** has provided non-profit legal aid to people incarcerated in Pennsylvania. It counsels, assists, and visits people in prison who write to the Project when they encounter problems they perceive as illegal or unfair. The Project listens to grievances and assists the people in prison by talking to prison authorities, furnishing people in prison with appropriate legal materials, evaluating the case, and/or proceeding with litigation. It represents people in prison who need to make long distance collect calls to family members or attorneys and often receives complaints from people who need to accept long distance collect calls from people in prison.

The Metropolitan Public Defender's Office represents indigent adults and juveniles accused of criminal or delinquent conduct in Davidson County, Tennessee. The increasingly high cost of telephone calls from jails, prisons and other custodial facilities in Tennessee creates a burden on pre-trial defendants, sentenced inmates, the families of defendants and inmates and on the lawyers who represent the defendants and inmates. Many of the clients of the Metropolitan Public Defender's Office receive sentences to the Tennessee Department of Corrections and are thus incarcerated some distance from Nashville. This requires that the clients be able to make long distance collect calls to the office and to their families or friends. Two of the state prisons are managed by the Correctional Corporation of America. The Correctional Corporation of America also manages one facility in Davidson County, which is dedicated primarily to the incarceration of Davidson County inmates serving sentences of six years or less. The Metropolitan Public Defender's Office accepts collect calls from clients in jails and prisons. The cost for these collect calls is increasing and is currently averaging over \$1,000 a month. This expense is ultimately a public expense and reduces the uses to which the office can put its budgeted funds.

Lesli Ann Myers is a criminal defense attorney in Broken Arrow, Oklahoma. Her clients are held in custody pre-trial by the City/County Jail Facility, which is administered by the